Local Government and Communities Committee

Common Good Property and Funds

Submission from Graham Tuley

BACKGROUND

I have lived in Inverness for over 25 years and over this time have heard many comments about the Inverness Common Good Fund from people and via the press. I am a retired Chartered Forester and so am not an expert in legal or financial matters.

AREA COVERED BY INVERNESS COMMON GOOD FUND

Since 1973 the area of what is now considered to be Inverness has expanded considerably from the old Inverness Burgh. Inverness was made a city in 2000 but there is no boundary associated with this change of status. Separate communities outside Inverness have expanded since 1973 and many regard Balloch, Culloden, Smithton and Westhill as part of the city. Massive new housing estates have been created on land much closer to the centre of Inverness but I believe that many of these are outside the old Burgh boundary. I live in an old Victorian house in what would be regarded as the centre of Inverness but at the time of its construction I believe it was outside the Burgh boundary.

It is necessary to clarify what area should benefit from the Fund. It cannot include Nairn because that town has its own Fund. The new community that is to be created half way between Inverness and Nairn at Tornagrain must be excluded because it is a new community and according to the background information provided by the Scottish Government “No new common good property can be created” and so the landowner is not able to establish a Common Good Fund for his new town. I consider that all the small communities in Strathnairn as well as Ardersier, Fort George, Dochgarroch, Kirkhill and North Kessock are outside the Fund boundary.

The old Burghs were legally defined and so the boundary of the area covered by the Fund needs to be updated because if it remains as the old boundary then substantial areas of what is now agreed as Inverness is excluded.

REGISTER OF COMMON GOOD PROPERTY

I do not believe an adequate register for the Inverness Fund exists. On 3rd February 2017 the Highland Council put out for consultation its Inverness City Centre Development Brief and on page 60 it states “This Council-owned site is currently a
carpark serving Inverness Town House." which is wrong because it is owned by the Fund. Errors like this should not happen!

Several years ago there was a dispute about the ownership of a large area of land where it was planned to construct a new road. The Council claimed it was Council owned and not part of the Fund and got a legal opinion to support its claim. During my life I have been involved in 2 cases which were decided at the Court of Session and so am aware that different legal opinions are possible and doubt that the Fund was adequately represented by the Council in this matter.

It is essential that a comprehensive register is created and made freely available to the public and they are invited to suggest areas of land that are believed to be owned by the Fund that are missing from the list. Trustees of the Fund must make sure that the register is complete and that all suggested omissions are adequately investigated.

I am disappointed by the statement in the background document that “No new common good property can be created.” I believe that if someone wishes to add to an established fund then it should be permitted. If the statement means that no new fund can be created then that is a different matter on which I have no strong views.

Should all the land that is owned by Inverness Common Good Fund be recorded by Registers of Scotland as such rather than lost in the vast landholding of Highland Council? Should all the land that the Highland Council registers with Register of Scotland be checked to confirm that it should not be regarded as Common Good land?

MANAGEMENT OF THE INVERNESS COMMON GOOD FUND

I believe there is a serious conflict of interest in the Council, both officials and Councillors, about what is in the best interests of the Council and the “common good” of those within the area of the Fund’s activities. I understand that all the Councillors are trustees of all the funds within the Highland Council area – this is ridiculous because someone in Wick or Fort William cannot know what the “common good” for Inverness is. Trustees cannot delegate their responsibilities. Only Councillors who represent areas with the Fund’s boundary should be trustees but there is a problem that some wards include substantial areas outside the Fund’s boundary.

Inverness Common Good Fund should have 12 trustees – 6 councillors and 6 other independent people. The 6 councillors should be chosen by all the Inverness councillors to represent the “common good”. The 6 other trustees should be selected because of their special knowledge of finance, property management and legal matters and will be able check on the management of the assets. Nairn has 4
Councillors and so a smaller number of trustees would be necessary for the Nairn Fund.

Councillors are provided with vast amounts of information via the internet by council officials. I do not believe that they can read all of it never mind understand it. This is made worse by making the text longer than necessary by repeating the same information such as in the Inverness City Development Brief which was approved City of Inverness Area Committee in December 2016. The new Fund trustees would be responsible for organising who is to carry out work on the Fund’s behalf which may be Council officials or they may decide to make independent arrangements. All documents for Trustees would be clearly indicated that they were for the Trustees of the Fund and not mixed in amongst council papers. All Trustees are responsible for making decisions about how the fund is managed and how any funds are spent for the “common good”. Trustees must make sure that a commercial rent is obtained for all property and that it is revised at frequent intervals – there have been failures to do this in the past.

I do not believe the Inverness Common Good Fund is well managed nor is information freely available about how it operates. The Town House is owned by the Fund and is undergoing a major maintenance and repair operation which is much more expensive because it has been neglected in the past. This costly repair is the responsibility of the owner. There is also a considerable expenditure on improving the facilities, which I think is also being paid for by the Fund, but this is only justified if it results in an increase in the rental income.

I understand that the Council charges very high fees to the local Chamber Music Society to use the Town House – I believe it works out at a higher rate per person than any other venue in Scotland. Next season the Common Good Fund is going to support the Chamber Music Society when it moves back into the Town House [it has been in temporary accommodation whilst major renovations have been taking place]. Charging high rates and then getting the Fund to subsidise the consumer looks like unofficial funding of the Council. I understand the Fund receives an income of £1 per year for the Town Hall car park – this is not a realistic figure.

A substantial area of land to the east of the A9 bordering the Moray Firth is owned by the Fund. It has been used as a rubbish tip by the Council. Some years ago it was suggested that it could be an open greenspace but recent proposals from the Council are that it should be developed for industrial and business use. The Council got £10M from the Inverness City Region deal to investigate development of the area. I am not convinced that the “common good” is best served by industrial development instead of using as an open recreational greenspace. I think councillors are used to approving applications for development and have been conditioned that it is best for the Highlands. I do not think that the Trustees of the
Fund have been asked what is the “common good” for inhabitants of Inverness of the future use of this area.

Concerns were raised when the Fund made a substantial donation towards the Scottish Open Golf Championship held some distance outside Inverness. It was a donation to a commercial organisation that was justified because it would bring more visitors to Inverness which was a benefit to the hotel, restaurants and shops and therefore of benefit to the “common good”. If the Council thinks it is of benefit to the highland economy then they should fund it not raid the Fund.

CONCLUSION

Inverness is lucky that it has a common good fund with substantial assets. It must be retained and managed for the benefit of the inhabitants and protected from liquidation by Highland Council to subsidise its activities.